

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation Provisions	)	
Of the Telecommunications Act of 1996	)	
	)	
The Southern Public Communication Association's,	)	
Petition for A Declaratory Ruling Regarding the Remedies	)	
Available for Violations of the Commission's Payphone	)	
Orders	)	

**MOTION OF THE SOUTHERN PUBLIC COMMUNICATION ASSOCIATION  
TO CONSOLIDATE ITS PETITION FOR A DECLARATORY RULING  
WITH THE PETITION FOR A DECLARATORY RULING OF THE  
ILLINOIS PUBLIC COMMUNICATIONS ASSOCIATION**

The Southern Public Communication Association ("SPCA"), pursuant to Rule 1.227, hereby moves the Federal Communications Commission ("Commission") to consolidate its Petition For A Declaratory Ruling dated November 9, 2004, with the Commission's consideration and hearing of the Petition for A Declaratory Ruling dated July 30, 2004 filed by the Illinois Public Communications Association ("ITPA") in CC Docket No. 96-128.<sup>1</sup> In support of the Motion the SPCA would show as follows:

1. The SPCA is a Louisiana not-for-profit trade association representing 14 independent payphone providers in Mississippi. BellSouth is an incumbent local exchange carrier in Mississippi and a Bell Operating Company as defined in 47 U.S.C. § 153(4).
2. The Mississippi Public Service Commission ("MPSC"), by its Order dated September 1, 2004 (in MPSC Docket No. 2003-AD-927) granted a Motion by BellSouth

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<sup>1</sup> See The Illinois Public Telecommunications Association's Petition for A Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders dated July 30, 2004 in CC Docket 96-128.

Telecommunications, Inc. ("BellSouth") for a dismissal of the Complaint of the SPCA against BellSouth for a refund to SPCA's members of Pay Telephone Access Service ("PTAS") rates. The Complaint had requested refunds from BellSouth to the extent BellSouth had charged PTAS rates from April 15, 1997 to October 1, 2003, (including "the amount of the federally tariffed SLC" charges charged by BellSouth as part of the monthly line charge) in excess of the new services test, in violation of the Commission's *Payphone Orders*<sup>2</sup> and of its *Wisconsin Order*.<sup>3</sup>

3. The SPCA, on behalf of its members, has petitioned the Commission for a declaratory ruling as to the consequences and remedies available for an ILEC's violation of the Commission's *Payphone Orders* and of its *Wisconsin Order* requiring the provision from and after April 15, 1997 of network services to PSPs at cost-based rates that satisfy the new services test. The SPCA further requested a specific Commission declaratory ruling: (1) that the MPSC had an obligation to follow and apply the new services test mandated by Section 276 and the Commission's *Payphone Orders* and *Wisconsin Order*, taking into account BellSouth's tacit admission by its tariff filing effective October 1, 2003 that its prior PSP line rates had been out of compliance with the new services test, including the requirement for elimination from the line rate of "the amount of the federally tariffed SLC" charges; (2) that the MPSC should not have

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<sup>2</sup> *In the matter of the Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541, ¶¶ 146-147 (September 20, 1996) ("**First Payphone Order**"), and Order of Reconsideration, 11 FCC Rcd. 21233 (November 8, 1996), ¶¶ 131, 163 ("**Payphone Reconsideration Order**") *aff'd in part and remanded in part sub nom. Illinois Public Telecommunications Assn. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) *clarified on rehearing* 123 F.3d 693 (D.C. Cir. 1997) *cert. den. sub nom. Virginia State Corp. Com'n v. FCC*, 523 U.S. 1046 (1998); Order, DA 97-678, 12 FCC Rcd. 20997, ¶¶ 2, 30-33, 35 (Com. Car. Bur. released April 4, 1997) ("**First Bureau Waiver Order**"); Order, DA 97-805, 12 FCC Rcd. 21370, ¶ 10 (Com. Car. Bur. released April 15, 1997) ("**Second Bureau Waiver Order**") (collectively "*Payphone Orders*").

<sup>3</sup> *In re Wisconsin Public Service Commission, Order Directing Filings, FCC Memorandum Opinion and Order Bureau*, FCC 02-25, 17 FCC Rcd. 2051 ¶¶ 61, 68 (January 31, 2002) ("**Wisconsin Order**"); affirmed sub nom. *New England Public Communications Council, Inc. v. Federal Communications Commission*, 334 F.3d 69 (DC Cir. 2003).

summarily dismissed the action of SPCA's Complaint without an evidentiary hearing because as a matter of preemptive federal law the SPCA had a right to pursue a cause of action in the MPSC for refunds for any period of time prior to the filing of the Complaint it could show that BellSouth had been out of compliance with the new services test; (3) that the PSP members of the SPCA are entitled to refunds or reparations from BellSouth Telecommunications, Inc. of the amounts BellSouth charged said SPCA members from April 15, 1997 through the effective date of the new PSP line rate tariff filing, October 1, 2003, for network services to the extent that the rates and charges were in excess of the cost-based rates of the Commission's new services test, including a refund of the amount of applicable federally tariffed SLC included in the monthly per line charge; (4) that the MPSC should re-evaluate its dismissal of the claims of the Complaint for refunds or reparations to ensure compliance with the Commission's rulings; (5) whether BellSouth was eligible to receive dial-around compensation for access code and toll free calls originating from their payphones on or before October 1, 2003; and (6) for such other relief arising from the facts in MPSC Docket No. 2003-AD-927 as the Commission deems necessary to enforce the Commission's *Payphone Orders* and its *Wisconsin Order*.

4. Quite similarly, the IPTA Petition for a Declaratory Ruling dated July 30, 2004, seeks a Commission declaratory ruling:

- 1) that the PSP members of the IPTA are entitled to refunds or reparations from ILECs from April 15, 1997 through a date certain, for network services to the extent that the rates and charges were in excess of cost-based rates of the Commission's new services test;
- 2) that the ICC decision denying the IPTA members refunds or reparations is inconsistent with the Commission's Payphone Orders and that the ICC should re-evaluate its denial of refunds or reparations to ensure compliance with the Commission's rulings; and
- 3) whether the ILECs were eligible to receive dial-around compensation


compensation for access code and toll free calls originating from their payphones prior to the filing of new tariffs to comply with the new services test.<sup>4</sup>

5. The SPCA's Petition for a Declaratory Ruling dated July 30, 2004, involves substantially the same issues as the issues presented by IPTA's Petition for a Declaratory Ruling. Both petitions seek a declaratory ruling involving the Commission's interpretation of rights and remedies of PSPs under Section 276 of the Telecommunications Act of 1996, including the Commission's declaratory ruling as to the consequences and remedies available for an ILEC's violation of the Commission's orders requiring the provision from and after April 15, 1997 of network services to PSPs at cost-based rates that satisfy the new services test. A consolidation of the two Petitions for a Declaratory Ruling would be most conducive to the proper dispatch of the Commission's business and to the ends of justice.

WHEREFORE, the SPCA move the Commission to consolidate its Petition For A Declaratory Ruling dated November 9, 2004, with the Commission's consideration and hearing of the Petition for A Declaratory Ruling dated July 30, 2004 filed by IPTA in CC Docket 96-128.

Respectfully submitted,

THE SOUTHERN PUBLIC COMMUNICATION  
ASSOCIATION

By:   
Robert P. Wise, Esq. (MSB #7337)  
Its Attorney

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4 See The Illinois Public Telecommunications Association's Petition for A Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders dated July 30, 2004 in CC Docket 96-128 at pp. 3, 18.

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November 9, 2004

### **CERTIFICATE OF SERVICE**

I, Robert P. Wise, do hereby certify that I have this day caused to be mailed by U.S. Mail, postage prepaid a true and correct copy of the above and foregoing Motion of the SPCA for a consolidation as follows:

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I, Robert P. Wise, do hereby further certify that I have this day caused a copy of the foregoing SPCA Petition to be served by electronic mail or U.S. Mail, on the following parties as indicated below:

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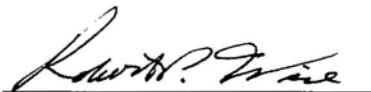
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